IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14226 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. ....Petitioner
Versus
JAYSHREEBEN WD/O.PRATAPBHAI THACKER & 3 - Respondents

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Appearance :
MR PV NANAVATI for Petitioner.
MR VIBHUTI NANAVATI for Petitioner.
MR MEHUL S SHAH for Respondents..
MR SURESH M SHAH for Respondents.
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CORAM :	**HONOURABLE MR.JUSTICE K.A.PUJ**

Date : 02/03/2007
ORAL JUDGMENT

1. The petitioner, namely, The New India Assurance Company Limited has filed this petition under Articles 226 & 227 of the Constitution of India praying for quashing and setting aside the order rendered by the learned Civil Judge (S.D.), Kachchh at Bhuj dated 07.05.2005 passed below an application Exh. 84/A in Special Civil Suit No. 10 of 1992.

2. The petition was admitted on 15.07.2005 and ad-interim relief in terms of para 9 (C) was granted whereby the order under challenge was stayed.

3. It is the case of the petitioner that the respondents have instituted Special Civil Suit No. 10 of 1992 in

the Court of learned Civil Judge (S.D.), Kachchh at Bhuj on the allegation that late Pratapbhai Thacker, husband of respondent No. 1 Jayshreeben and father of respondent Nos. 2 to 4 claiming compensation in the sum of Rs.2,00,000/- on the averments and allegations that he died in a motor accident which occurred near village Hamirpur on Naliya-Bhuj road on 07.10.1989 at about 11.30 a.m. The petitioner Insurance Company issued Policy bearing No.3121160206886 for the period from 19.04.1989 to 18.04.1990. The respondents have alleged that additional premium of Rs.8/- for L.L. to driver was also paid and contended that the Insurance Company was liable to pay compensation to them. The respondents have further averred that the suit was filed for specific performance of the terms of the Policy. Before filing the said suit, the respondents have served notice dated 12.09.1989 for payment of Rs. 2 Lacs and since the petitioner Insurance Company has not replied to the said notice, they filed the said suit on the said cause of action and averred in the suit that the cause of action has arisen

on 07.10.1989 when the death of the deceased was caused and on 28.02.1990 when the notice was sent. In the said suit, the petitioner filed written statement, *inter alia*, contending that the Court has no jurisdiction to try the suit and requested the Court to raise preliminary issue. The petitioner has filed an application Exh. 65 to frame the preliminary issue. Since the said prayer was rejected by the trial Court, the petitioner preferred Special Civil Application No. 11075 of 2002 before this Court and while disposing of the said petition vide judgment and order dated 18.02.2005, this Court directed the trial Court to decide the said issue of jurisdiction of the Civil Court as a preliminary issue and framed the issue as under :-

"Whether the Civil Court has jurisdiction to try the suit in question in view of the provisions contained in the Motor Vehicles Act ?"

The Court has also made it very clear that after recording the finding on the aforesaid issue first, if so required, the Court may decide other issues which

may be framed by the Court at an appropriate stage. The Court has also clarified that the Court has not expressed any opinion on the merits of the case and it is for the trial Court to decide the suit by considering the evidence on record. The said petition was accordingly allowed to this extent.

4. On the matter being remanded, the same was heard by the learned Civil Judge (S.D.) who by his order dated 07.05.2005 came to the conclusion that the Court has jurisdiction to try the said suit and passed an order to proceed further with the suit in accordance with law.

5. It is this order which is under challenge in the present petition.

6. Mr. Vibhuti Nanavati, learned advocate appearing for the petitioner with learned advocate Mr. P. V. Nanavati has submitted that Section 175 of the Motor Vehicles Act, 1988 puts bar on jurisdiction of the Civil Court. It reads as under :-

> "***175. Bar on jurisdiction of the Civil Courts*** :-
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> *Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim before compensation shall be granted by the Civil Court."*

7. Mr. Nanavati has further submitted that in view of the clear and categorical language of Section 175, no Civil Court has jurisdiction to entertain any question relating to any claim or compensation which may be adjudicated upon by the Claims Tribunal for that area and no injunction in respect of any action taken by or before the Claims Tribunal in respect of claim compensation shall be granted by the Civil Court. He has, therefore, submitted that there is total embargo by the said section for adjudicating upon the claim or question which arises under the Motor Vehicles Act of 1988.

8. Mr. Nanavati has further submitted that Chapter XII deals with constitution of the Claims Tribunal, procedure for making an application under Section 166 of the said Act and Section 168 empowers the Tribunal to determine the amount of compensation which appears to be just. Section 169 also provides for procedure and power of the Claims Tribunals. Further, Section 173 of the said Act provides for appeal. He has further submitted that the aforesaid Sections clearly manifest that Motor Vehicles Act, 1988 is a complete Act for determination of compensation in respect of an accident resulting in death of, or bodily injury to persons arising out of the use of the motor vehicle or damage to any property of a third party would arise or both. Thus, the Tribunal is invested with the competence to deal with cases in which a death has occurred on account of use of the motor vehicle on a public road. The suit filed by the respondents clearly avers and alleges that they are claiming compensation for death of Pratapbhai Thacker who unfortunately died on

account of his own negligence while driving the vehicle No. GTY 6697 on a public road within the jurisdiction of the learned Tribunal constituted under Section 165 at Kachchh, Bhuj. The averments and allegations made in the suit itself are sufficient for the purpose of adjudication of preliminary issue and there is no question of leading any evidence. There is no mixed question of law and fact but there is a crystal clear preliminary issue which is framed by the trial Court with respect to jurisdiction of the Civil Court. He has, therefore, submitted that the impugned order is absolutely illegal, not tenable at law and hence, it deserves to be quashed and set aside.

9. In support of his submission regarding jurisdiction, Mr. Nanavati has relied on the decision of the Hon'ble Supreme Court in the case of **New India Assurance Company Limited V/s. Smt. Shanti Misra, AIR 1976 SUPREME COURT 237** wherein it is held that the jurisdiction of the Civil Court is

ousted as soon as the Claims Tribunal is constituted and the filing of the application before the Tribunal is the only remedy available to the claimant.

10. Mr. Nanavati has further relied on the decision of the Hon'ble Supreme Court in the case of **Chairman, Thiruvalluvar Transport Corporation V/s. Consumer Protection Council, AIR 1995 SUPREME COURT 1384** wherein it is held that claim for compensation arising out of use of motor vehicle cannot be adjudicated by the National Commission. The complaint in the case of motor accident cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the injury is the direct result of the accident. The accident had nothing to do with service provided to the deceased passenger. This becomes obvious when one reads the provision along with the definition of “complaint” in Section 2 (c) and

"Service" in Section 2 (o) of the 1986 Act. Moreover the Motor Vehicles Act, 1988 and, in particular, the provisions in Chapter XII thereof create a Forum before which the claim can be laid if it arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the Consumer Protection Act.

11. Mr. Nanavati further relied on the decision of the Hon'ble Supreme Court in the case of **Union of India V/s. Bhagwati Prasad (D) and others, AIR 2002 SUPREME COURT 1301** wherein it is held that the crucial expression conferring jurisdiction upon the Claims Tribunal consisting under the Motor Vehicles Act is "the accident arising out of use of Motor Vehicle," and therefore, if there has been a collision between the Motor Vehicle and Railway train then all those persons injured or died could make application for compensation before the Claims Tribunal not only against the owner, driver or

insurer of the motor vehicle but also against the Railway Administration. Once such an application is held to be maintainable and the Tribunal entertains such an application, if in course of enquiry the Tribunal comes to a finding that it is the other joint tort-feasor connected with the accident who was responsible and not the owner or driver of the motor vehicle then the Tribunal cannot be held to be denuded of its jurisdiction which it had initially. In other words, in such a case also the Motor Vehicle Claims Tribunal would be entitled to award compensation against the other joint tortfeasor, and in the case in hand, it would be fully justified to award compensation against the Railway Administration if ultimately it is held that it was the sole negligence on the part of the Railway Administration. To denude the Tribunal of its jurisdiction on a finding that the driver of the motor vehicle was not negligent, would cause undue hardship to every claimant. The jurisdiction of the Tribunal to entertain application for claim of compensation in respect of an accident arising out of

the use of motor vehicle depends essentially on the fact whether there had been any use of motor vehicle and once that is established the Tribunal's jurisdiction cannot be held to be ousted on a finding being arrived at a later point of time that it is the negligence of the other joint tortfeasor and not the negligence of the motor vehicle in question.

12. Mr. Nanavati has further relied on the decision of the Hon'ble Supreme Court in the case of **S. Kaushnuma Begum and others V/s. The New India Assurance Co. Ltd. And others, AIR 2001 SUPREME COURT 485** wherein it is held that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action. In the case before the Hon'ble Supreme Court, the deceased pedestrian was

knocked down by jeep when its front tyre burst and consequently the vehicle became dis-balanced and turned turtle, the owner can be made vicariously liable for damages to dependants of victim even if there is no negligence on part of driver or owner of motor vehicle. Even apart from Section 140, which envisages no fault liability, claim for compensation can be sustained by applying Rule in Rylands V. Fletcher (1861-73) All ER 1 unless any one of exceptions to Rule can be applied.

13. Mr. Nanavati has further relied on the decision of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. V/s. Swaran Singh and others, AIR 2004 SUPREME COURT 1531** wherein it is held that the Claims Tribunal constituted under S. 165 read with S. 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not

restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in S. 174 of the Act for enforcement and execution of the award in favour of the claimants. Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of S. 149 (2) read with sub-section (7), as interpreted by Court above, the Tribunal, can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to

pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under S. 174 of the Act as arrears of land revenue.

14. As far as the High Court's power under Articles 226 & 227 of the Constitution of India and entertaining the petition challenging the interim order passed by the Civil Court is concerned, Mr. Nanavati has relied on the decision of the Hon'ble Supreme Court in the case of **Surya Dev Rai V/s. Ram Chander Rai and others, AIR 2003 SUPREME COURT 3044** wherein it is held that amendment by Act No. 46 of 1999 with effect from 01.07.2002 in S. 115 C.P.C. Cannot and does not affect in any manner the jurisdiction of the High Court under Arts. 226 and 227 of the Constitution. Interlocutory orders passed by the Courts subordinate to the High Court, against

which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in and continue to be subject to, certiorari and supervisory jurisdiction of the High Court. The Court further held that the curtailment of revisional jurisdiction of the High Court does not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a Civil Court nor the power of superintendence conferred on the High Court under Art. 227 of the Constitution is taken away or whittled down. The power exists, untrammelled by the amendment in S. 115 of the C.P.C., and is available to be exercised subject to rules of self-discipline and practice which are well settled.

15. Based on the aforesaid statutory provisions and judicial pronouncements, Mr. Nanavati has strongly urged that the learned Civil Judge has committed a very serious error in holding that the Court has jurisdiction to entertain the suit. He has, therefore,

submitted that the impugned order of the learned Civil Judge deserves to be quashed and set aside and the petition be allowed accordingly.

16. Mr. Mehul Shah, learned advocate appearing for the respondents, on the other hand, has submitted that the learned Civil Judge has rightly decided the application pursuant to the directions issued by this Court in earlier writ petition. The respondents have filed the suit for specific performance of contract. If one would peruse the plaint of the suit, it becomes very clear that the respondents have filed the said suit for compensation but the said compensation was claimed under specific performance of Contract and, therefore, the Civil Court has jurisdiction. The claims Tribunal cannot try and decide the suit which arises out of the specific performance of contract. It is true that Section 140, 163 & 166 are relevant Sections so far as the claim is concerned but referring to the averment made in the plaint, the respondents have not demanded the claim or compensation under any provision of Motor Vehicles

Act, 1988. It is the claimant to decide by which forum he wants to adjudicate his claim. Since the compensation was demanded under the provisions relating to Specific Performance of contract, the learned Civil Judge has rightly come to the conclusion that the Civil Court has jurisdiction to try the suit filed before the Civil Court.

17. Mr. Shah has further submitted that while disposing of the earlier petition being Special Civil Application No. 11075 of 2002, this Court has specifically directed the Civil Court that after recording finding on the preliminary issue, if so required, the Court may decide other issues which may be framed by the Court at an appropriate stage. The Court has also made it clear that since the suit is of the year 1992, the trial Court was directed to decide the aforesaid issue at the earliest and in any case not later than 30.04.2005. In case the finding of the trial Court is in favour of the plaintiffs / respondents, whereby the trial Court comes to a conclusion that it has jurisdiction, then the trial Court shall frame other

issues and dispose of the suit latest by 31.12.2005. On the basis of this direction, Mr. Shah has contended that since the trial Court has come to the conclusion that the Civil Court has jurisdiction and since the trial Court has already framed other issues, this Court should not interfere now in the order passed by the trial Court and allow the trial Court to proceed with the suit.

18. Mr. Shah has further submitted that the question of jurisdiction is a mixed question of law and facts and it can not be decided by way of preliminary issue. In support of this submission, Mr. Shah has relied on the decision of the Hon'ble Supreme Court in the case of **Lufthansa German Airlines V/s. Vij Sales Corporation, (1998) 8 SCC 623** wherein it is held that the present case was not one of such suits which should have been disposed of on the preliminary issue. While deciding the question whether the suit was barred by limitation, the High Court had to examine the allegations made in the plaint and the

stand taken by the appellant in the written statement. The Court was, therefore, of the view that it shall not be proper for this Court to form any opinion on the finding recorded by the Learned Single Judge on the question of limitation. The proper course should be to direct the trial of the suit which had been withheld for more than 14 years to proceed with the suit. Since in the present case, earlier this Court has done the same thing and directed the trial Court to proceed with the suit, the Court should not now interfere with the proceedings which are pending before the trial Court after deciding the preliminary issue.

19. Mr. Shah has further relied on the decision of this Court in the case of **Shishirkumar Sharadchandra Sen V/s. Bina Ashwinkumar Bhaumik, 1991 (1) GLR 195** wherein it is held that as per sub-rule (2) of Rule 2 of O. XIV of C.P.C., an issue of law only can be tried as a preliminary issue, if the issue relates to a bar to the suit created by any law or the issue

relates to the jurisdiction of the Court. This provision further requires that the case is likely in the opinion of the Court, to be disposed of on an issue of law only, and not on determination of mixed issue of law and fact. Moreover, even if the case is likely to be disposed of on a pure issue of law, the Court will have to exercise its discretion judicially for trying such issue as a preliminary issue on overall consideration of the relevant facts including the age of the suit and the fact of oral evidence having been recorded already. The Court further held that looking to the language of Order 14, Rule 2 of C.P.C., the Court should not have exercised such discretion by directing the aforesaid issues to be decided as preliminary issues.

20. Mr. Shah has invited the Court's attention to the decision of Karnataka High Court in the case of **B. Prabhakar and another V/s. Smt. Bachima, AIR 1984 KARNATAKA 225,** wherein the claimant had filed a petition before the Motor Accident Claims

Tribunal, Chickmagalur for compensation and the claim was dismissed because the deceased driver himself was responsible for causing the accident. In this context, the Court held that before an application could be entertained by the accident Claims Tribunal under Section 110 of the Motor Vehicles Act, the cause of action should be such as could be entertained by the Claims Tribunal. It must give rise to a claim for compensation under S. 110 of the Motor Vehicles Act. In other words, the accident must have occurred due to actionable negligence of the owner or the driver of the vehicle causing injury or death of third party. When the accident occurred due to actionable negligence of the deceased himself being the driver, no claim by his legal representatives can be entertained by the Claims Tribunal under Section 110 of the Motor Vehicles Act. Since the respondents were aware that their claim may not be entertained by the Claims Tribunal, they have preferred civil suit by invoking the provisions contained in the Specific Relief Act and they have asked for specific performance of the

contract.

21. While justifying the respondents' action of approaching Civil Court for their claim of compensation, Mr. Shah relied on the decision of Karnataka High Court in the case of **Y. R. Shanbhag V/s. Mohammed Gouse and others, 1991 ACJ 699** wherein the Karnataka High Court has held that Section 110-A of the Motor Vehicles Act does not create an independent right for any person to claim compensation before the Tribunal. It creates only a special forum and a cheaper and expeditious remedy for a victim of motor vehicle accident to pursue a remedy available to him under common law and the law of Torts. Therefore, the claimant in a case of this kind has to allege and establish actionable negligence on the part of the driver of the vehicle and only in that event he could hold the owner of the vehicle vicariously responsible for the actionable negligence on the part of his driver. When the very action of the driver himself is

the basis for a claim under this section, it is needless for us to point out that the driver himself cannot sustain an action under section 110-A of the Act against his owner and insurer arising out of his own action.

22. Mr. Shah has further relied on the decision of this Court in the case of **United India Insurance Company Limited V/s. Jagatsinh Valsinh and Others, 1986 G.L.H. 573** wherein it is held that if the claimant is held to be a tort feasor, it is beyond comprehension as to how a tort-feasor can be awarded compensation for the tortious act committed by him. If the claimant sustained injuries and suffered disablement as a result of such injuries he has to blame himself for it was his own negligence which caused these injuries. If the claimant was negligent he can not come forward and say “pay me compensation for my own negligence”. The Tribunal has not examined whether the position of a tort-feasor who is employee, would be different

from other tort-feasors.

23.Mr. Shah has further relied on the decision of the Hon'ble Supreme Court in the case of **Minu B. Mehta and another V/s. Balkrishna Ramchandra Nayan and another, AIR 1977 SUPREME COURT 1248** wherein it is held that the liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent. Under S. 95 (1) (b) (i) it is required that policy of insurance must be a policy which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The

insurance policy is only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. Therefore if the owner has not incurred any liability in respect of death or bodily injury to any person there is no liability and it is not intended to be covered by the insurance. The expression "liability which may be incurred by him" is meant as covering any liability arising out of the use of the vehicle. A person is not liable unless he contravenes any of the duties imposed on him by common law or by the statute. In the case of a motor accident the owner is only liable for negligence and on proof of vicarious liability for the acts of his servant. Proof of negligence is therefore necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case.

24.For pointing out the inherent restraints on the exercise of Court's power under Article 227 of the Constitution of India, Mr. Shah has relied on the decision of the Hon'ble Supreme Court in the case of **Sadhana Lodh V/s. National Insurance Co. Ltd. and another, AIR 2003 SUPREME COURT 1561** wherein it is held that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Art. 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Art. 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision.

25. Based on the averments made in the plaint, directions issued by this Court in earlier writ petition and since the respondents are seeking specific performance of the Contract, Mr. Shah has strongly urged that the learned Civil Judge has not committed any error while holding that Civil Court has jurisdiction to entertain the claim made by the respondents / original plaintiffs and in any case, since there is no apparent error on the face of the order passed by the learned Civil Judge, this Court should not entertain the petition filed under Article 226/227 of the Constitution of India and the petition be dismissed forthwith.

26. I have heard Mr. Vibhuti Nanavati, learned advocate appearing for the petitioner and Mr. Mehul S. Shah, learned advocate appearing for the respondents at great length. I have also gone through the impugned order passed by the learned Civil Judge (S.D.), Kachchh at Bhuj dated 07.05.2005 passed below an application Exh. 84/A in Special Civil Suit No. 10 of 1992. I have considered the respective submissions

made on behalf of the respective parties and also gone through the judgments cited before the Court. It is true that the respondents have filed the suit for specific performance of contract and for recovery of Rs. 2 Lacs being the amount of compensation. It appears from the averments made in the plaint of the suit that the deceased Pratapbhai Jethmal Thacker was a self-employed transport operator. He was also the owner of the motor vehicle No. GTY-6697 which met with an accident near village Hamirpur on Naliya – Bhuj road on 07.10.1989. It is specifically averred in the plaint of the suit that the death of Pratapbhai Jethmal Thacker was the direct result of the motor vehicle accident and the said motor vehicle was insured with the additional premium of Rs.8/- for L.L. to driver. It was, therefore, contended that the Insurance Company was liable to pay compensation to the present respondents being the legal heirs of deceased insured i.e. Pratapbhai Jethmal Thacker. Simply because the suit is filed under the nomenclature of Specific Performance of contract and compensation of Rs.2 Lacs was claimed

thereunder, it does not mean that there is altogether a different transaction and it has nothing to do with the Motor Vehicles Act. Section 175 of the Motor Vehicles Act clearly puts a bar on jurisdiction of the Civil Courts. The plain reading of this Section makes it abundantly clear that *w*here any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. There is no dispute about the fact that Claims Tribunal, Kachchh at Bhuj is constituted. There is also no dispute about the fact that claim for compensation is made in relation to an accident of a Motor Vehicle which is insured with the petitioner Insurance Company. The plain reading of the above Section as well as the authorities cited by Mr. Nanavati and referred to hereinabove unequivocally prove that the jurisdiction of the Civil Court is ousted as soon as the Claims Tribunal is constituted and the filing of the claim petition before the Tribunal is the only remedy available to the claimant.

27. Despite this forum of Claims Tribunal is available to the respondents, they have chosen to file Special Civil Suit before the Court of learned Civil Judge (S.D.), Kachchh at Bhuj. The respondents are well aware after getting legal advise in this regard that their claim petition before the Claims Tribunal may not be entertained on merits in view of the provisions contained under Section 165 read with Section 168 of the Act as the Claims Tribunal is empowered to adjudicate all claims in respect of the accident involving death or a bodily injury or damage to property of third party arising in use of motor vehicle. The liability of the owner of the motor vehicle to compensate the victim in a motor vehicle accident due to the negligent driving of his servant is based on the law of Tort and for negligence of the servant, the owner is made liable on the basis of vicarious liability. However, if the claimant is held to be a tort feasor, it is beyond comprehension as to how a tort-feasor can be awarded compensation for the tortious act committed by him. If the claimant

sustained injuries and suffered disablement as a result of such injuries he has to blame himself for it was his own negligence which caused these injuries. If the claimant is negligent, he can not come forward and claim compensation for his own negligence. It is precisely for this reason, the respondents have not chosen to file the claim petition before the Claims Tribunal and chose to file Civil Suit before the Civil Court.

28. As indicated above, simply by changing the name, the nature of proceedings or the nature of claim cannot be changed. It remains a claim for compensation arising out of a motor vehicle accident and since the Claims Tribunal is already constituted, the jurisdiction of Civil Court is obviously barred by virtue of Section 175 of the Act. The Civil Court has, therefore, no jurisdiction to entertain the said suit. When the preliminary issue is raised and this Court has directed the Civil Court to decide the said preliminary issue, it is bounden duty on the part of the learned Civil Judge to decide the said issue in

accordance with the provisions of law. Since the learned Civil Judge has made a glaring error of law and assumed the jurisdiction which he is lacking, this Court thinks it just and appropriate to interfere in the said order and since the order is absolutely without jurisdiction, the same is required to be quashed and set aside.

29. There is no substance in the argument of Mr. Shah, learned advocate appearing for the respondents that once this Court in earlier proceedings has directed the Civil Court to frame the preliminary issue and if that preliminary issue is decided in favour of the original plaintiffs / present respondents, in that case, the Court may decide other issues which may be framed by the Court at an appropriate stage, there is no scope for any interference in this order. Earlier, observations may not be interpreted in a way to confer the jurisdiction on the Civil Court which is not there and simply on that ground, the petitioner cannot be restrained from approaching this Court by way of the present petition if the impugned order is

absolutely untenable at law. Since this Court has already come to the conclusion that the Civil Court has no jurisdiction to entertain and try the suit and by virtue of the impugned order jurisdiction is conferred upon itself, it is required to be quashed and set aside.

30. The impugned order rendered by the learned Civil Judge (S.D.), Kachchh at Bhuj dated 07.05.2005 passed below an application Exh. 84/A in Special Civil Suit No. 10 of 1992 is accordingly quashed and set aside. The petition is allowed. Rule is made absolute without any order as to costs.

[K. A. PUJ, J.]

31. When this order is pronounced, Mr. Mehul Shah, learned advocate appearing for the respondents has submitted that since the impugned order is quashed and set aside by this Court holding thereby that the Civil Court has no jurisdiction to entertain the suit, the respondents may be permitted to raise a

contention before the Civil Court with regard to return of the plaint of the suit to the Claims Tribunal. It is open for the respondents to raise such a plea before the Civil Court and the Civil Court will decide the same in accordance with law.

[K. A. PUJ, J.]

Savariya